

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
COX'S MOTION TO FILE UNDER SEAL**

Plaintiffs SATV and its affiliates EMI Al Gallico Music Corp., EMI Algee Music Corp., EMI April Music Inc., EMI Blackwood Music Inc., Colgems-EMI Music Inc., EMI Consortium Music Publishing Inc. d/b/a EMI Full Keel Music, EMI Consortium Songs, Inc., individually and d/b/a EMI Longitude Music, EMI Feist Catalog Inc., EMI Miller Catalog Inc., EMI Mills Music, Inc., EMI Unart Catalog Inc., EMI U Catalog Inc., Jobete Music Co. Inc., Stone Agate Music, Screen Gems-EMI Music Inc., Stone Diamond Music Corp. (the “Sony/ATV Plaintiffs”), and Plaintiffs Atlantic Recording Corporation, Bad Boy Records LLC, Elektra Entertainment Group Inc., Fueled By Ramen LLC, Roadrunner Records, Inc., and Warner Bros. Records Inc. (the “Warner Music Plaintiffs”) submit this memorandum in support of Cox’s motion to seal (ECF No. 195), submitted with Cox’s June 28, 2019 Motion to Compel (ECF No. 191) (the “Motion”), the supporting memorandum (ECF No. 193, the “Memorandum”), and the supporting Declaration of Thomas M. Buchanan (ECF No. 193-1, the “Buchanan Declaration”).

Cox's Motion requests that the Court seal Exhibits 6 and 7 to the Buchanan Declaration (ECF Nos. 193-2, 193-3) and portions of the Buchanan Declaration and Memorandum that cite to Exhibits 6 and 7 (collectively, the "Proposed Sealed Exhibits").

Exhibit 6 is an excerpt of the deposition transcript of Mr. Anish Patel, who is an Associate Director in Sony/ATV's Business Affairs Department. *See Exhibit 6 (Patel Dep. Tr. at 56:19 – 57:8).* Exhibit 7 is an excerpt of the deposition transcript of Mr. Michael Abitbol, Senior Vice President, Business and Legal Affairs, Digital for Sony/ATV Music Publishing LLC. *See Exhibit 7 (Abitbol Dep. Tr. at 145:14-24, 153:16-154:15).* These exhibits, and portions of the Memorandum and Buchanan Declaration that cite to them, discuss information that was designated as "Highly Confidential – Attorneys' Eyes Only" under the Stipulated Protective Order (ECF No. 60).

Specifically, the Proposed Sealed Exhibits discuss information relating to the Sony/ATV and Warner Music Plaintiffs' proprietary processes for handling legal notices that they may have received from non-parties (which Plaintiffs maintain are irrelevant to the factual and legal issues in this case). This includes (1) Plaintiffs' processes for recording, tracking, and responding to such notices, (2) details regarding how Plaintiffs maintain their files relating to these notices, and (3) valuations and/or evaluations that Plaintiffs may conduct in relation to their works that have been subject to such notices.

Sealing is necessary because this information is particularly sensitive, and its disclosure would create a substantial risk of competitive harm to the Plaintiffs if compromised. *See ECF No. 60 (Stipulated Protective Order).* With this information, competitors could use Plaintiffs' confidential, competitively sensitive, and proprietary information – including confidential business decisions and analyses – to unfairly compete with Plaintiffs. Further compounding the

risk of harm, the supporting Memorandum and Buchanan Declaration filed in support of the Motion mischaracterize the proposed sealed exhibits in terms of relevance, confidentiality, and accuracy. Plaintiffs disagree with Cox's statements and intend to dispute them. Public filing of the proposed sealed exhibits would also cause unnecessary harm by disclosing Plaintiffs' confidential dealings with third parties—including but not limited to issues relating to settlement communications or agreements with individuals and entities who are not parties to this action.

Based on the foregoing, the Sony/ATV and Warner Music Plaintiffs request that the Court grant Cox's motion to seal.

Dated: July 8, 2019

Respectfully submitted,

/s/ Scott A. Zebrak
Scott A. Zebrak (38729)
Matthew J. Oppenheim (*pro hac vice*)
Jeffrey M. Gould (*pro hac vice*)
Kerry M. Mustico (*pro hac vice*)
OPPENHEIM + ZEBRAK, LLP
4530 Wisconsin Avenue, NW, 5th Floor
Washington, DC 20015
Tel: 202-480-2999
scott@oandzlaw.com
matt@oandzlaw.com
jeff@oandzlaw.com
kerry@oandzlaw.com

Attorneys for Plaintiffs